

SPECIAL CIVIL APPLICATION No 4240 of 1986

Hon'ble MR.JUSTICE M.C.PATEL sd/-

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- GUNVANTBHAI R PATEL

STATE OF GUJARAT

MR.C.V.PRAJAPATI FOR MR SV RAJU for Petitioner  
MR.K.M. MEHTA FOR M/S MG DOSHIT & CO for  
Respondents Nos.1 and 2.  
NOTICE SERVED for Respondent No. 3

Date of decision: 23/06/1999

The petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution.

This petition was called out and argued on 18th June 1999. It was adjourned to 21st June 1999, at the request of the learned Advocate for the petitioner, so that he could cite authorities, if any. On 21st June 1999, a mention was made on his behalf that he was not available and a request was made that the matter may be kept on 22nd June 1999. However, nobody turned up on 22nd June 1999 and I have waited till the second sitting today. In the circumstances, I proceed to judgment.

The petitioner was a non-graduate secondary school teacher. He had passed Inter Arts examination and had obtained Secondary Teachers Course Certificate. He started his career in 1954 as a secondary school teacher. He joined the HBK New High School as teacher in the secondary section in 1961 and since then according to him he had been working in the said school. It appears from the affidavit-in-reply filed by the District Education Officer, respondent No.2 herein, that under the rules only those persons who were graduates and possessed the degree in education were eligible to be appointed as teachers in secondary schools and any management running the secondary school was entitled to receive salary grant from the Government for only those teachers who possessed the said qualifications. Thus, under the prevalent rules, graduates possessing Secondary Teachers' Course Certificate or under-graduates possessing such certificates were not eligible for the post of teacher in the secondary school. The Government, however, considering their long service in the secondary schools had decided to continue such teachers and also paid grant for salaries of such teachers who had been appointed in such schools prior to 1.1.1976. However, in view of the fact that such teachers possessed lower educational qualifications, they were placed in a payscale lower than that of qualified teachers. The payscales of the teachers were determined under the Government Resolution dated 1.1.1976 and they were as follows:-

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| A) | Graduate teachers possessing<br>B.Ed. Qualification                      | Rs.440-750 |
| B) | Graduates possessing<br>Secondary School Teachers'<br>Course Certificate | Rs.440-650 |
| C) | Matriculate possessing<br>Secondary Teachers' Course<br>Certificate      | Rs.290-560 |

The petitioner was, therefore, placed in the payscale of Rs.290-560 as per the said resolution. There was no challenge by the petitioner to the said pay-scale. However, by G.R. dated 23.7.1981 graduate teachers, who had put in 15 years of service as on 1.1.1979 were given the selection grade. But the benefit of selection grade was restricted to 20 percent of the total sanctioned posts in the given school. Again, by G.R. dated 13.12.1985 the said GR was modified and the teachers who had put in 17 years of service as on 1.4.1981 were given the selection grade restricted to the total number of sanctioned posts in a particular school. The petitioner's grievance is that the said resolutions are discriminatory because they deny benefit of selection grade to non-graduate teachers. The petitioner has also made a grievance about another G.R. dated 10.12.1981 to which I shall refer subsequently. It appears that previously the petitioner had filed Special Civil Application No.3892 of 1985 challenging the said three GRs, but the same was disposed of on 27.1.1986 in terms of the following order:-

"The petitioner who is Secondary School teacher has approached this Court with a grievance that whereas in other non-Govt. Secondary Schools selection grade is given to the teachers who have put in 17 years of service, the petitioner has been discriminated against and he has not been given the said benefit.

When notice pending admission was issued, on behalf of the respondents a statement was made that if a representation is made it will be considered. Under the circumstances the petitioner is directed to make a representation to the authorities concerned within a period of one week from to-day and on such representation being received by the authorities concerned, it shall be disposed of within a period of six weeks from the date of the receipt. The authorities deciding the said representation shall consider the case of the petitioner from the angle that if persons similarly situated as the petitioner have been granted benefit of selection grade, the petitioner without any reason need not be deprived of the same.

With the aforesaid observations the petition stands disposed of as withdrawn. Notice is discharged. No order as to costs."

According to the petitioner, he immediately made a representation and requested a personal hearing, but he did not receive the intimation of the date of personal hearing in time and his representation was rejected without hearing him. He thereupon filed the present petition.

It is true that the petitioner's representation was rejected without hearing him, but there was nothing in the previous order made by this Court requiring the authorities to give a personal hearing to the petitioner and in any case there is no point in sending the matter back after 13 years directing the authorities to give a personal hearing to the petitioner and it would be better to dispose of this petition on merits.

It is contended on behalf of the petitioner that as far as work put in by graduate and non-graduate teachers is concerned, it is identical and there is no rational basis for discriminating against the non-graduate teachers in the matter of providing them with the selection grade and hence the GRs dated 23.7.1981 and 13.12.1985 are arbitrary, capricious and violative of Articles 14 and 16 of the Constitution.

On behalf of the respondents, the respondent No.2, who was the District Education Officer, Ahmedabad City, has filed affidavit-in-reply. As stated earlier, he has explained that non-graduate teachers were not eligible for the post of teachers in a secondary school, but considering their long service in the secondary schools, the Government had decided to continue them and also pay grant for salaries of such teachers who had been appointed prior to 1.1.1976. But in view of the fact that such teachers possessed lower educational qualification, they were placed in a pay scale lower than that of the qualified teachers and their pay scales were determined under the GR dated 1.1.1976. The petitioner had not challenged the said GR. He has challenged the subsequent GRs granting selection grade only to graduate teachers. However, classification on the basis of educational qualifications is well-recognised and cannot be said to be arbitrary or capricious (See *The State of Jammu & Kashmir v. Triloki Nath Khosa and others*, AIR 1974 SC 1). In the present case, non-graduate teachers were not eligible, but those who had been appointed before 1.1.1976 were continued in service even though they did not possess the required qualification and they were granted a lower pay scale in view of their lower educational qualification. Moreover, though they were

not given selection grade, they were given four increments with effect from 1.6.1980 under the same GR dated 23.7.1981. In the circumstances, denial of benefit of selection grade to them cannot be said to be discriminatory or arbitrary.

The petitioner has also challenged the GR dated 10.12.1981. As stated earlier, though under the earlier GR dated 23.7.1981 the matriculate teachers were not given selection grade, they were granted four increments in the payscale of Rs.290-560 with effect from 1.6.1980. However, those teachers, who had already reached the maximum in the payscale on that day and who were less than four stages below the maximum in the payscale, could not avail themselves of the full benefit given under the GR dated 23.7.1981. A representation was made on their behalf by the federation of teachers and the Government, after considering the representation, decided to grant the benefit of four increments to those teachers who had attained the maximum of the scale. Thus, under the GR dated 10.12.1981, they were given benefit of such increment by way of personal pay. For example, a teacher who was already drawing Rs.515/- as salary on 1.6.1980, was granted three increments plus Rs.15/- as personal pay. The petitioner's grievance is that those teachers, who were drawing less than Rs.500/- as salary on 1.6.1980, could not cross the barrier of Rs.560/- and hence the said GR makes discrimination between teachers in the same category. However, as pointed out earlier, those teachers, who had already reached the stage of Rs.515/- and above in the payscale could not get the full benefit of four increments granted under the GR dated 23.7.1981 and since a grievance was made on their behalf by the federation of teachers, the Government decided to grant personal pay to them so that they could get the full benefit of four increments. Under the previous GR dated 23.7.1981, the teachers with long period of service could not get the full benefit. Under the circumstances, such grant of personal pay cannot be said to be discriminatory. The decision of the Supreme Court in Sandeep Kumar and others vs. State of Uttar Pradesh and others, (AIR 1992 SC 713) cited on behalf of the petitioner has no application to the facts of the present case. There is no substance in the grievance made by the petitioner with respect to the said GR on the ground that since his pay was less than Rs.500/- on the relevant date, he could not get more than Rs.560/- under the said GR.

In view of the above discussion, the petition fails and is accordingly dismissed. Rule discharged. No

order as to costs.

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